

1                   LOS ANGELES SUPERIOR COURT  
2                   BC 368163  
3                   CC REMAND ORDER, DOCKET AND REMAND LETTER

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8                   UNITED STATES DISTRICT COURT  
9                   CENTRAL DISTRICT OF CALIFORNIA

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11                  THELMA V. SPIRTOS; JOHN               ) Case No. CV 08-05187 DDP (CWx)  
12                  EARDLY,                                )  
13    ) **ORDER GRANTING MOTION TO REMAND**  
14                  Plaintiff,                            )  
15                  v.                                      ) [Motion filed on September 4,  
16                  PACIFICA MORTGAGE FUND, LLC,        ) 2008 ]  
17                  a California Limited                )  
18                  Liability Corporation;               )  
19                  DOWNEY SAVINGS, INC., a              )  
20                  California Corporation ,             )  
21                  Defendants.                            )  
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24                  **I. BACKGROUND**

25                  Thelma Spirtos and John Eardley filed a lawsuit in state court  
26                  against Pacifica Mortgage Fund, LLC ("Pacifica") and Downey  
27                  Savings, Inc. on May 13, 2008, which sought to invalidate property  
28                  liens of Pacifica's predecessor company. Pacifica filed a cross-  
complaint against Eardley on September 21, 2007, suing him under  
state law for equitable indemnity, apportionment and contribution,  
declaratory relief, and imposition of an equitable lien.

29                  Thelma Spirtos, who was not named as a defendant in the cross-  
30                  complaint, filed a notice of removal of the cross-complaint on

1 August 20, 2008, alleging that she is a "necessary and  
2 indispensable party" and that she "holds title solely as Defendant  
3 Roe 1."

4 Pacifica now brings a motion to remand the cross-complaint.

5 **II. LEGAL STANDARD**

6 Removal statutes are strictly construed. Luther v.  
7 Countrywide Home Loans Servicing, LP, 533 F.3d 1031, 1034 (9th Cir.  
8 2008)(citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.  
9 1992)). A defendant has the burden to establish that removal is  
10 proper, and any doubt is resolved against removal. Gaus, 980 F.2d  
11 at 566.

12 **III. DISCUSSION**

13 Notice of removal of a civil action or proceeding must be  
14 filed within 30 days after the receipt by the defendant. 28 U.S.C.  
15 1446(b). Spirtos filed notice of removal on August 7, 2008, almost  
16 one year after the cross-complaint was served on Eardley on  
17 September 21, 2007. Spirtos provides no explanation for this  
18 delay.

19 Additionally, there is no basis for subject matter  
20 jurisdiction in the cross-complaint, nor is one provided by  
21 Spirtos.

22 **IV. CONCLUSION**

23 The Court GRANTS the motion to remand.

24 IT IS SO ORDERED.

25  
26 Dated: November 17, 2008

  
27 DEAN D. PREGERSON  
28 United States District Judge